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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,077	10/31/2003	Leslie Ross	BSG P65AUS	1364
20210	7590	01/11/2006	EXAMINER	
DAVIS & BUJOLD, P.L.L.C. FOURTH FLOOR 500 N. COMMERCIAL STREET MANCHESTER, NH 03101-1151			VO, HAI	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/699,077

Applicant(s)

ROSS, LESLIE

Examiner

Hai Vo

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-25 is/are pending in the application.
- 4a) Of the above claim(s) 24 and 25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1771

1. The art rejections over Massey et al (US 3,755,063) as evidenced by the article "ABS Quick Fact" are withdrawn in view of the present amendment. Massey does not teach or suggest a thermoformable laminated structure comprising a core of honeycomb cellular material.
2. The art rejections over Kaufmann et al (US 5,484,500) as evidenced by RD 405061, the article "Thermoplastic Polymer Products", and Pip (US 4,740,530) are withdrawn in view of the present amendment. Kaufmann does not teach or suggest a structure panel comprising a core of honeycomb cellular material made from a thermoplastic material.
3. The art rejections over WO 2001 58687 are maintained.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 21-23 are rejected under 35 U.S.C. 102(e) as being anticipated by WO 2001 58687. US 2003/0087079 to Okabe is relied on as an English translation of WO 2001 58687 substantially as set forth in the 06/06/2005 Office Action.

Claim Rejections - 35 USC § 103

Art Unit: 1771

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 16-20 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO 2001 58687 substantially as set forth in the 06/06/2005 Office Action. Okabe does not specifically disclose the honeycomb cellular core formed from extruded tubes. However, it is a product-by-process limitation not as yet shown to produce a patentably distinct article. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted Declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with honeycomb cellular core of Okabe.

Response to Arguments

5. The art rejections over Okabe have been maintained for the following reasons.

Applicant argues that nowhere does Okabe disclose the method of compressing the layers to form the laminate. The examiner disagrees. The examiner directs Applicant to paragraph 198 wherein the assembly was compressed at a temperature of 1250C and pressure of 196 Kpa to obtain the composite laminate. Applicant argues that because the outer layers are stretched when they are bonded to the

laminate, the rigid laminate produced from the method disclosed in Okabe is believed to be distinctly different from the laminate made according to the present invention. The arguments are not persuasive for patentability because they are not commensurate in scope with the claims. Nothing specific about the physical properties in the claims to indicate that the laminate of the present invention is not so rigid as the laminate of Okabe, i.e., modulus, bending stiffness and etc. It is recognized that Okabe does not disclose the laminate is heated to a point at which the thermoplastic adhesive adheres to the skins to the core. However, it is a product-by-process limitation not as yet shown to produce a patentably distinct article. It is the examiner's position that the laminate of Okabe is identical to or only slightly different than the claimed article prepared by the method of the claim, because both articles are formed from the same materials, having structural similarity. The laminate comprises a honeycomb cellular core sandwiched between the two facing materials. The honeycomb cellular core and the facing material are formed of thermoplastic materials. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or an obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show unobvious differences between the claimed product and the prior art product. *In re Marosi*, 218

Art Unit: 1771

USPQ 289,291 (Fed. Cir. 1983). It is noted that if the applicant intends to rely on Examples in the specification or in a submitted Declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with Okabe. It is suggested that the physical attributes resulted from such a processing step needs to be incorporated into the claims in order to overcome the issues of anticipation or the finding of obviousness. Finally, Applicant argue that the rigid laminate would certainly resist such a molding step. Since the arguments are based on Applicant's opinion and there is no factual evidence or experimental data to support Applicant's assertion, the arguments are not found persuasive to overcome the art rejections.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory

Art Unit: 1771

period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (571) 272-1485. The examiner can normally be reached on Monday through Friday, from 6:00 to 2:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HV

Hai Vo

**HAIVO
PRIMARY EXAMINER**